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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1912

LAURA G. WHITE,
Appellant,
vs.
ISLAND TRANSPORTATION COMPANY,
Appellee.

No. 2

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE WESTERN DISTRICT OF WASHINGTON.

BRIEF OF APPELLANT

M. J. GORDON,
P. C. SULLIVAN, and
E. B. STEVENS,
Proctors for Appellant.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1912

LAURA G. WHITE,
Appellant,
vs.
ISLAND TRANSPORTATION COMPANY,
Appellee.

No. 568

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE WESTERN DISTRICT OF WASHINGTON.

BRIEF OF APPELLANT

The appellant herein commenced an action in the Superior Court of the State of Washington, for King County, against the appellee, to recover damages for an injury to her person while a passenger on the steamer "Fairhaven," on the 29th day of July, 1909.

The steamer was commonly known as a stern-wheeler, and was provided with decks and cabins for the convenience and accommodation of its passengers. Through the stern or after-deck, iron rods extended for the purpose of holding and supporting the paddle wheel used in propelling the vessel. The rods—commonly known as hog-chains—ran through the deck extending above it at an angle of about fifty degrees from the perpendicular.

The appellant had been standing on the deck close to one of these rods and her right heel had become wedged or fastened in the angle formed between the deck and the rod or hog-chain, in such a manner as to cause her to fall when she thereafter started to walk to the dining room. In falling, the neck of the femur of her right leg was broken and she was permanently injured. (Paragraphs 1 and 2, Answer to Petition, pp. 5 and 6, Transcript of Record. Article 3 of Petition, p. 2, Transcript of Record.)

The answer, filed in said cause by the appellee, among other things admitted that it was operating the stern-wheeler "Fairhaven," and alleged that the iron rods were a part of the construction of the vessel and were built in at the time the vessel was constructed. (Page 6, Transcript of Record.)

The cause being at issue was set down for trial by jury on the 7th day of June, 1910. Thereupon

appellee filed its petition in the District Court of the United States for the Western District of Washington, Northern Division, for a limitation of liability, under the Federal Statutes commonly known as "Limitation of Liability Acts,"

Rev. Stat. §§ 4282-4287,

U. S. Comp. Stat. 1901, pp. 2943-2944,

and appellant was enjoined from proceeding in the action pending in the state court.

Thereafter, in the District Court, appellant answered the petition, in which answer she excepted to the jurisdiction of the District Court for the reason that it appeared from the petition that the facts stated therein were not sufficient to bring the petitioner within the statutes of the United States, commonly known as "Limitation of Liability Acts;" and that from Article 3 of the petition, it appeared that the claim of the appellant was to recover for an injury received while a passenger, in falling over a rod known as the hog-chain, which was part of the construction of the vessel. Without waiving the exception, the appellant further answered, setting up affirmatively in detail the facts upon which the claim for damages of the appellant rested. (Page 5, Transcript of Record.)

Thereafter appellant moved to dismiss the petition of the appellee and all the proceedings thereunder, for the reasons already stated. This motion

was based upon the petition of appellee for limitation of liability, the objections thereto of the appellant, and all the pleadings and records in said cause. (Transcript, page 10.)

The motion to dismiss was denied and appellant, electing to stand upon her exceptions, a decree was entered that appellant take nothing by her action. This appeal follows.

ASSIGNMENT OF ERRORS.

I

The Honorable District Court erred in its order and judgment made and entered on the 5th day of December, 1910, wherein it overruled and denied the appellant's motion to dismiss the petition of appellee for a limitation of liability, and all proceedings thereunder, for the reason that the Court did not have jurisdiction of the subject matter of the proceedings.

II.

The Honorable District Court erred in its order and judgment entered December 5th, 1910, overruling and denying this appellant's motion to dismiss the petition of appellee for a limitation of liability, for the reason that it appears upon the face of the petition of said Island Transportation Company, and the other pleadings in the cause, that the facts stated are not sufficient to bring the said Island

Transportation Company within the statutes of the United States, known as "Limitation of Liability Acts."

III.

The Honorable District Court erred in not granting the appellant's motion to dismiss the petition of the Island Transportation Company, for the reason that the said Court was without jurisdiction of the subject matter of the proceedings, as appeared upon the face of the petition of said Island Transportation Company, and the other pleadings in said cause.

IV.

That the Honorable District Court erred in not granting and allowing appellant's motion to dismiss the petition of appellee for a limitation of liability, for the reason that there was but one claim only, and there is nothing in the petition or other pleadings in said cause to show the existence or ground for apprehending the existence of any other claim.

V.

The Honorable District Court erred in its decree of September 25th, 1911, awarding judgment to the petitioner, Island Transportation Company, and adjudging and decreeing that the appellant, Laura G. White, take nothing by this action, for the reason that it appears on the face of the petition for limitation of liability and other pleadings in said cause

that the Court is without jurisdiction of the subject matter and without jurisdiction to make and render said judgment and decree.

ARGUMENT.

The different assignments present but a single question, which may be stated as follows: Do the limited liability acts of Congress extend to appellant's cause of action, as that cause of action is disclosed by the record?

Section 4283, Compiled Stat. of 1901 (page 2943), reads as follows:

"The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, lost, damage, or forfeiture, done, occasioned, or incurred, without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending."

Additional or supplementary thereto, is Section 18, Ch. 121, Act of June 26th, 1884, which reads as follows:

"That the individual liability of a ship-owner, shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessels and freight

pending; *provided*, That this provision shall not affect the liability of any owner incurred previous to the passage of this act, nor prevent any claimant from joining all the owners in one action; nor shall the same apply to wages due to persons employed by said ship-owners."

In the somewhat recent case of

Richardson vs. Harmon, 222 U. S. 96,

this Court exhaustively reviewed the cases arising under the former section and also considered the effect of the latter section on the substantive law. On this latter point you said:

"We therefore conclude that the section in question (Sec. 18, Act of 1884) was intended to add to the enumerated claims of the old law 'any and all debts and liabilities' not therefore included. * * Thus construed, the section harmonizes with the policy of limiting the owner's risk to his interest in the ship in respect of all claims arising out of the conduct of the master and crew, whether the liability be strictly maritime or from a tort non-maritime, *but leaves him liable for his own fault, neglect, and contracts.*"

The injury for which the appellant sought recovery did not arise out of the conduct of the master or crew, but *from the fault and negligence of the owners* in improperly constructing a vessel which it thereafter devoted to the carriage of passengers for hire. The improper construction consisted in placing iron rods (commonly called hog-chains) in the stern or after-deck of the vessel, which rods

extended above the deck at an angle of about fifty degrees from the perpendicular, these rods being for the purpose of supporting the paddle-wheel used in propelling the steamer. The deck surrounding the rods or hog-chains on all sides being designed and intended for use of passengers, raised the duty on the part of the appellee to properly box or safeguard the rods or hog-chains for the safety of the passengers using the deck in their vicinity. See Paragraph 3 of Petition (Transcript, page 2), Paragraph 2 of Answer (Transcript, page 5), and the answer of the appellee to the appellant's complaint in the state court, set forth in paragraph 4 of appellant's answer to the petition (Transcript, page 6).

From this latter reference it will be seen that in its answer to the complaint in the state court, appellee expressly asserted, "That the said steamer 'Fairhaven' is a stern-wheel steamer and is provided with decks and cabins for the convenience and accommodation of passengers; that the iron rods passing through the deck of the said steamer for the purpose of holding and supporting the paddle-wheel used in propelling said steamer, *are a part of the construction of the said vessel, and were built in the said vessel at the time the same was constructed* in the same manner that they were at all times mentioned in the complaint herein, and that they are a

necessary and integral part of the said vessel * * * etc."

It will thus be seen that the claim which the appellant was asserting was one predicated on negligent construction by the owner, as contradistinguished from any negligence arising out of the conduct of the master and the crew.

It will not be gainsaid that the law devolved upon the appellee as a common carrier of passengers for hire the duty of providing safely constructed and properly equipped boats engaged in such carriage, so far as the exercise of the highest degree of care, prudence and foresight might contribute toward making them safe.

Philadelphia & Reading Ry. Co. vs. Derby, 14 Howard 485,

Steamboat New World vs. King, 16 Howard 469,

Pennsylvania R. Co. vs. Roy, 102 U. S. 451,

Stokes vs. Saltonstall, 13 Pet. 181,

Railroad Co. vs. Pollard, 22 Wall. 341,

Williams vs. S. F. & N. Ry. Co., 39 Wash. 77,

Firebaugh vs. Seattle Electric Co., 40 Wash. 658.

Since the owner had the right to design and construct this vessel according to its own plan, it would seem to follow, as a necessary sequence, that an injury to a passenger which is the result of im-

proper construction, must be attributed to the fault of the owner, rather than that of the master and crew. To state the case is to argue it, and it is submitted that the decree of the learned District Court should be reversed.

Respectfully submitted,

M. J. GORDON,

P. C. SULLIVAN, and

E. B. STEVENS,

Proctors for Appellant.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1912

LAURA G. WHITE,
Appellant,

vs.

ISLAND TRANSPORTATION COMPANY,
Appellee.

No. ~~568~~ 206

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE WESTERN DISTRICT OF WASHINGTON.

BRIEF OF APPELLEE

OVID A. BYERS,
ALPHEUS BYERS,
Proctors for Appellee.

Acme Press, Seattle

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1912

LAURA G. WHITE, *Appellant,* vs. ISLAND TRANSPORTATION COMPANY, *Appellee.*	No. 568

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE WESTERN DISTRICT OF WASHINGTON.

BRIEF OF APPELLEE

The only question involved in this appeal is that of jurisdiction; not jurisdiction to render the decree, for that is not criticised, but whether the Court had jurisdiction to entertain the proceeding, and the record has been transmitted only so far as ap-

pellant deemed necessary for a determination of that question.

If it appears, therefore, from the averments in the petition taken as proved, that the Court had jurisdiction for any purpose, the cause must be affirmed.

That the facts there alleged or admitted do show jurisdiction in admiralty, we think is established both by reason and authority.

The assignments of errors, save as to the fourth assignment, are vague and indefinite, and do not call either to the attention of this Court or the District Court anything more specific than the motion itself. So it becomes practically necessary in order to present the cause, to show not that the assignments are not meritorious, but to show affirmatively that the Court had jurisdiction.

The petition contains the usual allegations and (Art. 5, page 3, Transcript of Record) "that it is claimed by the said White, and may be claimed by others on board said boat, that by and because of the negligence of the employees of this petitioner in the proper handling of said vessel and in not furnishing them safe and proper facilities or in not

informing them of dangerous conditions, that the said White was injured, and she has brought suit against petitioner," etc.

The Court must assume the allegations to be true, until the contrary is established.

Appellee denied all the claims of the said White. Those claims aggregated Twenty-three Thousand Dollars (Transcript of Record, page 6), more than double the value of the vessel, which was alleged did not exceed Ten Thousand Dollars in value (Transcript of Record, page 3). It was also alleged, that, if the accident did happen, it was without the design, negligence, privity or knowledge of the libellant (Art. 7, Transcript of Record, page 3).

The appellant had no legal right to a dismissal for lack of jurisdiction until her denials of the allegations of appellee's petition were established by proof satisfactory to the Court. Appellant recognizes this (Art. 8, Transcript of Record, page 7) and alleges:

"The respondent further alleges that the facts are such that the petitioner is not entitled to take the benefit of the limited liability acts and *joins issue* with the petitioner thereon and asks that the Court determine this question before it proceeds further in said matter."

It is true that Article 3 of the petition states that the said White claimed to be injured by falling over a rod known as a hog chain, but Article 5 sets forth other and additional claims she alleged.

The appellee further alleged that the said accident occurred without privity or knowledge, or that appellee had any knowledge of the injury or its cause until after the time of its occurrence. (Art. 4, Transcript of Record, page 3, and Art. 7, Transcript of Record, page 4.)

The procedure taken by appellee was that provided by the fifty-fourth admiralty rule and outlined by this Court in *Providence & N. Y. S. S. Co. vs. Hill Mfg. Co.*, 109 U. S. 378, and we think is correct in every particular.

This Court has, in *Butler vs. Boston S. S. Co.*, 130 U. S. 527, used the following language:

"We think that the law of limited liability applies to cases of personal injury and death as well as to cases of loss or injury to property. This conclusion is decisive of the controversy arising on the libel of the appellants for, if the law applies to the case of personal injuries, it was then the duty of the libellants to have appeared in the case of limited liability instituted by the owners of the vessel, and to have contested there the question whether, in the particular case, the owners were or were not entitled to the benefit of the law. Had

the action of the appellant been first commenced, it would have been suspended by the institution of the limited liability proceedings and the very object of those proceedings was not only to stop the prosecution of actions already commenced, but to prevent other suits from being brought. Allegations that the owners, themselves, were in fault, cannot affect the jurisdiction of the Court to entertain a cause of limited liability for that is one of the principal issues to be tried in such cause."

While the objections to the claim of appellant are not set forth in the record, the record does show that there were objections filed as the Motion to Dismiss (Par. 2, Transcript of Record, page 10), "is based on the petition, the claim of Laura G. White, and the objections made by the petitioner to the claim of Laura G. White."

But the record goes still further than this. The allegations of the petition of appellee are, for the purpose of this cause, proved; for the stipulation provides:

"Whereupon a final decree was entered without proof being taken, proof being waived." (Transcript of Record, page 17.)

"And thereafter and in pursuance thereof and for the purpose of this appeal, a final decree was entered." (Transcript of Record, page 13.)

There is one further point to be discussed: The fourth assignment of error. This seems to

have been abandoned by the appellant as no argument is made with regard to this assignment in the brief served upon us. This may be, either because the great weight of authority is against appellant's contention, or because the facts of this case do not accord with the assignment. The record discloses that there were two claims filed by appellant—one for damages for physical injuries, in the sum of Twenty Thousand Dollars, and one for expenses incurred for medicines and medical attendance in the sum of Three Thousand Dollars.

Whether one claimant files many claims or many claimants file one claim each, the result will be, practically, the same, and it would not seem probable that by an assignment of many claims to a single person, that that person could bring an action in the State Court, and defeat the beneficent purposes of the law and prevent a limitation of liability. As far as we have been able to discover, even assuming, for the sake of argument, that there is but one claim, there are only three decisions that would tend to sustain appellant's assignment number four.

These are:

The Rosa, 53 Fed. 132.

The Eureka, 108 Fed. 672.

The Lotta, 150 Fed. 719.

And even in "The Lotta," where the District Court attempted to follow the law as laid down in "The Rosa" and "The Eureka," the Court nevertheless only entered an order dissolving the injunction, and did not dismiss the cause for want of jurisdiction, for the reason:

"That, if it should hereafter appear in the course of the proceedings in the State Court that a question is raised as to the right of petitioner to a limited liability, this Court has exclusive cognizance of such a question."

Indeed, the limitation of liability is preeminently a question of admiralty jurisdiction and it has been held practically from the foundation of the government

"That admiralty jurisdiction can only be exercised under the laws of the United States."

Janney vs. The Columbia Insurance Company, 10 Wheaton, 336.

That a motion to dismiss ought not to be granted, even if there be but one claim is held in

The Hoffmans, 171 Fed. 455.

The Southside, 155 Fed. 364.

In re Starin, 124 Fed. 101.

The S. A. McCauley, 99 Fed. 302.
Quinlan vs. Pew, 5 C. C. A. 438.

and inferentially, at least, in

Providence vs. N. Y. S. S. Co., 130 U. S. 527.

We respectfully submit that the decision of the learned District Court should be affirmed.

Respectfully submitted,

OVID A. BYERS,
ALPHEUS BYERS,
Proctors for Appellee.